

# **TAJIKISTAN**

## **ASSESSMENT OF USAID COMMERCIAL LAW REFORM ACTIVITIES**

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### ***Introduction***

This document provides recommendations concerning the scope of future commercial law reform activities in Tajikistan. The author conducted a four-day trip to Dushanbe, Tajikistan, at the invitation of USAID/Almaty, in order to provide guidance and recommendations on next steps for the mission's programming.

The author went to Central Asia with two other individuals from the EGAT bureau, Janet Forest and David Dod. While David Dod and Janet Forest focused on Kyrgyzstan, I focused my efforts on Tajikistan. Due to in part to remoteness, to issues in obtaining visas and air transportation, and to the conflicting schedules with the Dushanbe country office, the time I spent in Dushanbe was curtailed to merely three business days. Nonetheless, the three days were packed morning to evening with useful meetings and interviews.

It is the hope and wish of the writer that these meetings form a sufficient framework for assessing the commercial law and trade capacity building needs of Tajikistan for providing the necessary comfort to the mission in Almaty to program the next several years of technical assistance in these areas. Please note that this assessment does not address the financial and banking sectors of Tajikistan; therefore, no recommendations are made concerning these key aspects of the economy.

### ***Activities evaluated***

USAID has been providing assistance on commercial law matters to the Central Asian Republics since the inception of the USAID program in the former Soviet Union. Presently, assistance is being provided under the LIME (Legal Infrastructure for a Market Economy) Program in Tajikistan. (Some ancillary work is being conducted by a sister project, the Trade Facilitation Project, implemented by Pragma Corporation. The LIME Project's task order became effective on September 30, 1999, and its completion date is August 4, 2005.

The purposes of this assessment are to:

- A. Determine the effectiveness of recent activities carried out under the LIME task order, in establishing the legal and institutional framework necessary to support a market-based economy in Tajikistan;

- B. Provide a basis for recommendations regarding whether and what activities the Mission should consider implementing in Tajikistan following termination of the LIME task order; and
- C. Provide a basis for recommendations regarding whether and what trade and investment-related activities or components, current or contemplated as LIME follow-on work, that might be merged into the USAID Trade Facilitation and Investment (TFI) project or a subsequent single, cohesive project.

## **Overview**

Tajikistan is a former republic of the Soviet Union, and one of the poorest. About 50% of the population is estimated to be below the poverty line, according to the EBRD in 1998. Tajikistan is geographically isolated and poorly integrated into global markets. There are repeated closings at the Uzbek border for transit and imports of Tajik goods, especially for agricultural products and light consumer goods. This limits benefits from trade. Tajikistan cannot compete well due to landlocked status. There are long transit times. Kazakhs don't have as much of a problem.

The per capita GDP of \$187—or less than a dollar a day—send many working age men to Russia and other CIS countries with labor opportunities to work as migrant workers.

As an independent republic, it has inherited a European (albeit Marxist) orientation in its legal development.<sup>1</sup> Following the resolution of the civil war, Tajikistan set itself on a course of making continuous improvements to its legal system that are accomplishing a transition to a market economy. Marxism itself appears to be passé, at least in the academy. Interviews with students on the question produced chuckles, a very good sign indeed! But government control over the economy is something deeply ingrained after decades of Soviet rule, and now Tajikistan's leaders show signs of authoritarianism—symbolized best by the off-budget construction of a sprawling Presidential palace complex. These things suggest that attainment of a rule of law society is in jeopardy.

### ***A. Effectiveness of the LIME task order activities***

The LIME task order appears to have been very successful. It has rendered technical assistance on numerous commercial law disciplines in Tajikistan, and has done it very efficiently in comparison with other legal reform programs surveyed by the author. Very notable are the adoption of a new civil code, ongoing reforms in pledge/movables, company law and registration, laws dealing with real property, and the top-to-bottom overhaul of the judicial system.

Below are notes concerning highlights on major commercial law topics that were related to the author during the visit to Dushanbe:

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<sup>1</sup> This European outlook is a major distinguishing feature between Tajikistan and its neighbor to the south, Afghanistan, although the populations are ethnically linked.

- **Bankruptcy:** The government is in the process of implementing a new law that contains important reorganization provisions. The LIME project provide3d crucial assistance by way of publishing handbooks and guides and training trustees. Six cases have been adjudicated to date.
- **Contract:** Although the Tajikistan has adopted a new Civil Code following independence, most observers agreed that the Civil Code requires amendments. Agreement exists among the Tajik government Civil Code working group members, preventing faster progress on this issue.
- **Collateral/Pledge:** Adoption of a new law for movables is on the Presidential priority list; a draft law has been finalized and will be put to Parliament. The LIME project has been supporting the efforts of the group drafting the legislation, including sending international pledge law expert Yair Baranes to Dushanbe. Some minor problems continue, such as the continued immunity of state property as from taking from seizure as a foreclosed collateral pledge.
- **Commercial Dispute Resolution:** USAID has been conducting judicial training programs for over six years. Significant assistance has been provided to the new Judicial Training Center, but further cooperation is being jeopardized by the government's refusal to administer objective, competitive examinations for judges. The Council of Justice, nominally the administrative office of an independent judicial branch, appears to be falling under the control of the executive branch.
- **Company Law:** A law on joint stock companies is in the works that introduces corporate governance methods—esp. protections of minority shareholders. The company registry appears to be functioning smoothly—donors will be able to better assess the company registration regime once the Doing Business 2006 survey is completed.
- **Competition Policy & Privatization:** Tajikistan has a nascent competition policy authority that is requesting assistance from foreign donors. Some useful work in smoothing out the rough edges of original legislation creating the agency and in training staff on the conduct of investigations could be done in this area. The author recommends that assistance should be provided through USAID's Participating Agency Partnership Agreement with the Federal Trade Commission.
- **Financial Crimes Law:** The Ministry of Justice revealed that the government is working on legislation to prevent the fraudulent transfer of moneys for illicit activities, such as terrorism or narco-trafficking. The draft law, which had not been translated into English at the time of the visit, should be reviewed by US experts for compliance with US Patriot Act provisions and for possible conflicts with human rights provisions.
- **International Trade:** Apart from WTO accession efforts, the key area the government has been working on is adoption of a new Customs Code. Other laws are on the legislative for accession as well. The consultative council mechanism may be able to play an increasingly bigger role in the development of Tajikistan's trade policy. To be certain, the business environment will be enhanced with public-private sector dialogue through the consultative council process.

- **Real Property/Mortgage:** Privatization of real property is beginning to take place, even though a thorough basis for it in the larger Tajik legal framework may not have been fully established.<sup>2</sup>
- **Other:** The authorities need help on laws for Energy Production and Distribution, Health Care and Insurance.

## ***B. Recommendations for Future Work***

Findings and conclusions are broken into two separate headings: Crosscutting considerations and commercial law considerations. The latter are presented according to the four-dimensional methodology used by USAID/Washington in its commercial law diagnostics. This is done in order to better categorize findings for the mission's analysis and decision-making.

### **1. Cross-Cutting Issues:**

**Enhance Regional cooperation:** USAID's experience in other parts of the world (notably the Central American countries) is that regional cooperation and economic integration can have a galvanizing effect on promoting economic growth. Small, resource poor countries like Tajikistan are unable to attract significant amounts of foreign investment. But regional clusters of such countries can alter the picture. For example, the countries of Central America are small, with immature markets. But if the promise of the Central American Free Trade Agreement is realized, then the countries will begin to act more like a single, larger market.

One of the difficulties in Central Asia is that the countries apparently only pay lip service to regional cooperation.<sup>3</sup> Uzbekistan, with the largest population, fears possible Islamist contagion spreading from Afghanistan through Tajikistan. Kazakhstan is relatively well off with its oil wealth and takes its lead from the Russian's example. Kyrgyzstan is relatively small and landlocked.

The governments of these countries may not understand the benefits of linking their markets together. Their experience of integration under the until-now failed CIS and Eurasian regional arrangements is a poor one.<sup>4</sup> But integration would allow for more specialization and access to larger markets—potentially boosting economic growth.

To make economic integration more meaningful, commercial legal institutions ought to be harmonized and made similar across the region. One ideal example would be to have complementary collateral registries and legal provisions among all the countries. If done well, this would allow for cross-border lending; banks in one jurisdiction could lend to entities in another using collateral located in a third.

The challenge for USAID/CAR's is to promote regional commercial integration while also accomplishing country specific targets. USAID's LIME and TFI projects are regional

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<sup>2</sup> One interlocutor mentioned that the legal framework still "assumes" that the state owns all property

<sup>3</sup> A fifth country, Turkmenistan, doesn't even make the pretence of lip service regarding economic integration.

<sup>4</sup> Tajikistan's experience regarding Uzbekistan border closures

structurally, but country-specific operationally. For example, the LIME project office in Tajikistan does little collaborating with its sister office in Kyrgyzstan. Very likely, the same might be said for the TFI project too.

Certainly the two countries are at different stages of development and certainly regional cooperation entails higher expenses. But the result may be significantly better for the economies and businesses of the region as a whole. As the EBRD survey states: Tajikistan is “particularly dependent on cooperative neighbours for its future economic development.” A program of legal reform that has a regional element to it might be very useful to Tajikistan.

**Promote Public-Private Dialogue:** One of the major conclusions of USAID/EGAT's Seldon Project is that commercial law reforms can only take hold through their acceptance and understanding of the private sector. (See the Seldon Project website at [www.bizlawreform.com](http://www.bizlawreform.com)). The LIME project receives plaudits for including members of the private sector in its legal drafting working groups. Several interlocutors expressed their approval of this arrangement.

The TFI project should encourage the Tajik Government authorities to engage in further public-private dialogue in the formulation of Tajikistan's foreign trade policies. This might be done through the further broadening of the Consultative Councils' mandate into the formulation of trade policy, or perhaps through other means. Examples of reasonably successful models are the Pro-Committees in Central America and in Southeast Europe.

## **2. Commercial Law Issues:**

### **Written Law**

- **Continue providing assistance on legislative drafting:** Enormous changes have been made to Tajikistan's written legislative environment since its independence in 1992. Much of the legal infrastructure is in place cementing the transition to a market economy. Nonetheless, this process is incomplete and in many ways the legal system has yet to catch up with modern business practices. One key aspect of economic freedom, for example, the enshrinement of real property rights, still need to be accomplished according to numerous interlocutors.

According to reports of the LIME project, the few Tajiks with experience in commercial law drafting appear to be disappearing from the scene. Those who remain available appear to be expecting craving more resources and costly study tours. This is a troubling trend, if confirmed. One way to possibly shift the dynamic is to create a Legal Reform Clearing Center (along the lines of a **Legislative Drafting Institute**, created in Ukraine).

- **Support the WTO accession and compliance process through legislative drafting:** Tajikistan (as well as its neighbor Kyrgyzstan) is geographically isolated and poorly integrated into global markets. The Tajik people (and the business community) will be well served by continuing trade liberalization. In order for this to be accomplished, the WTO accession project must continue to provide support for legislative drafting in WTO disciplines. Present drafting

needs focus on the following areas, according to discussions: Technical Barriers to Trade (TBT), Customs reform, and IPR.

### **Implementing Institutions**

Implementing Institutions are the various agencies, organizations, and bodies that society relies upon to administer and implement legal procedures. All of Tajikistan's implementing institutions require strengthening—it merely is a matter of degree the extent to which it must be done. Key institutions that require focus are the following:

- **Courts:** The court system shows *the promise* of providing effective commercial dispute resolution services to the general public. While the survey did not include a thorough going examination and evaluation of the courts, a visit to one of Dushanbe's district courts show that the court system suffers from material needs and does not have the requisite institutional capacity to conduct its work in an efficient and corruption-free manner.

A description of the myriad disputes about housing provides a window into the courts' predicament. There are now arising numerous claims by dispossessed individuals returning to Dushanbe to reclaim apartments that they once occupied. Many of these individuals are claiming that their housing was sold under fraudulent circumstances during the civil war (e.g., signatures may have been forged, squatters may have "sold" housing to good faith purchasers, etc.). While most cultures agree that fraud is improper, the Tajik courts do not have reliable and uniform approaches to such cases, opening a very tempting opportunity for bribery and corruption. The publicization of judicial precedents through any means, written or electronic, and policy discussions about such problems would help make consistent judicial decision-making.

- In order to significantly reduce corruption (which is assumed to exist, and which has been identified by other observers), judicial salaries and working conditions will have to increase significantly. While these things are beyond the scope of the USAID program, there are some things that may improve the lot of the judicial system, for example: Improve administration of the court system through better case management (expected to be accomplished through computerization of the courts—now on hold), better training and supply of staff, and creating an accessible database of judicial decisions.<sup>5</sup> Another way to improve the functioning of the courts is to change procedures in order to compel plaintiffs and defendants to appear in court for civil proceedings.
- **Judicial Training Center:** The JTC is a marvelous institution and ought to be supported as much as possible by the project. A change in the leadership and administration of the JTC change should call into question future support, however. The JTC is well positioned for serving as a regional mini-hub for judicial education activities, especially in connection with USAID/Kabul. Some mention of this should be made to Mr. Fred Witthans in Kabul to explore what further programming might be accomplished.

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<sup>5</sup> It wasn't clear whether the Adliya database or some other database existed in Tajikistan for distributing court decisions.

- **Executive Branch:** Cooperation with the executive branch may be more difficult to sustain, particularly if the authoritarian tendencies solidify. Nonetheless, cooperation should proceed on certain objectives that in the long run will open up commercial relations in society. Therefore, work should continue with commercial legislative drafting, drawing in the support of the other two branches of government (courts and legislature) and the private sector/business community whenever possible. Technical assistance should be provided with the following:
  - Creation and responsible functioning of the various property registries (e.g., for movables and for real property);
  - Promotion of transparency, generally, in government administration<sup>6</sup>;
  - Reduction of licensing and regulatory requirements; and
  - Curtailing illicit uses of the banking and finance sectors (for narco-trafficking, money laundering, and financing terrorist activities).
- **WTO Agencies:** While the WTO Unit in the Ministry of Economy and Trade appears to be staffed by expert individuals, there are few individuals spread through Tajik government agencies that have a solid working knowledge of the WTO agreements. Several interviewees described some policy problems with accession, including the disposition of Tajikistan's alcohol and tobacco monopoly, the transport services sector, the need to create inquiry points for TBT and SPS purposes, and a generalized lack of information and expertise to conduct tariff negotiations. Another problem, the implementation of the provisions of the Eurasian Customs Union, was also identified. While this is not properly a matter for US technical assistance, work in this area might be useful if it were to reduce Tajikistan's geographic isolation and enhance its access to markets.

Among the items that may be considered for follow-up would be to establishing of a WTO information center that would provide an alternate repository of intellectual capacity in Tajikistan for trade skills. This could provide the nucleus of a future NGO or think-tank (as was provided in Albania and in Russia).

### **Supporting Institutions**

- **Establishing a rule of law society:** Tajikistan is a country that has come a long way in establishing the rule of law, a particularly striking accomplishment following several years of internecine conflict. Nonetheless, much remains to be done:
  - People in general are still not aware of their legal rights, and are numbed to the control by state government authorities over many aspects of their commercial lives.
  - Nonetheless, a small but potentially vibrant civil society of supporting institutions appears to be operating more or less freely and is making some headway against state control.

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<sup>6</sup> One interviewee mentioned that there is no access to draft laws, and that the government fails to publish laws, regulations, and edicts regularly. This was not verifiable by the author.

- **Enhancing professionalism among legal reformers and the legal profession:** An oft-repeated lament on the part of legal reformers is that they are so few in number in Tajikistan. Certainly, the cadre of lawyers and the enhancing of credentials would be useful
  - Help create a Business Lawyers Association (as a private voluntary organization), perhaps in conjunction with ABA-CEELI, to provide a forum and center for promoting the best practice of business law. An example of this is the Macedonian Business Lawyers Association in Skopje.
  - Credentialing law schools—one interlocutor mentioned that there were several new law schools established in Tajikistan, but that these law schools had dubious credentials.
  - Promote reform in the Tajikistan Bar Association. (No meetings were held with the Bar Association—in fact, it is unclear whether one exists.)
- **Support business community participation in the legal reform process.** LIME and USAID are on the right track to include representatives of the business community in legislative working groups.

### **Social Dynamic**

The Social Dynamic is the real leavening agent that creates a sustainable commercial law system. Intrinsic to this is an understanding and empowerment by users and consumers of the legal system so that they may make their wishes, problems, and concerns known to the administrators and legislators of laws and regulations. The social dynamic can be jump-started in societies through public-private dialogue, formation of NGOs and PVOs, and think tanks which parallel (and can second guess) government bodies.

Several recommendations follow:

- **Consultative Councils:** These are good first steps to deepening public participation in the reform process. Through this mechanism, government agencies should begin to learn further on how to make Tajik businesses more competitive through tax/cost reduction.
- **Legislative working groups should be institutionalized through creation of a Legal Reform Clearing House.** One of the MPs interviewed proposed creating an experts' council that would have the ability to analyze legislation for Parliament. (A major fear was that the Parliament and the executive branch simply do not have enough time or expertise to analyze all draft law carefully.) This suggestion should be taken one step further in future task orders by enabling the establishment of an NGO that could handle these functions alongside that of the government and the reform project. A model for possible use would be the Ukrainian legal reform clearinghouse, which is a project that the ARD/Checchi consortium is implementing in Kiev.

### **3. Project Design Recommendations & Follow-up**



Several conclusions flow from the interviews and findings gathered<sup>7</sup>:

- The LIME project should continue through its planned termination date of August 2005.
- A new task order should be issued allowing for an additional years worth of work until the expiration of the TFI project.
- A new regional task order should be issued in August 2006 that would incorporate elements of the LIME and TFI task orders on a regional basis. This new task order's SOW should incorporate the findings of the Tajikistan and Kyrgyz assessments. In addition, the new task order should incorporate the performance of a commercial law diagnostic (along the lines of the CLIR methodology as provided in the [www.bizlawreform.com](http://www.bizlawreform.com) website).

#### **4. Follow up items for USAID/Washington:**

- Ensure that Tajikistan will be included in the Doing Business 2005 indicators.
- Discuss possible competition policy assistance with counterparts at the Federal Trade Commission:
  - Put Mr. Russ Damtoft in touch with Madina;
  - Get English language copies of laws
- Obtain model documents for EGAT website:
  - English copy of Handbook on drafting laws;
  - English copy of LIME's judicial bench book
- Connect Tajik authorities with US experts regarding financial crimes laws;

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<sup>7</sup> An elaboration of the reasons behind this can be provided upon request.

# Appendix 1

## ***WTO/Trade Dushanbe Interviews***

Due to in part to remoteness, to issues in obtaining visas and air transportation, and to mission's absorption in a strategic review, the time I spent in Dushanbe was curtailed to merely three days. Nonetheless, the three days were packed morning to evening with useful meetings and interviews. It is the hope and wish of the writer that these meetings form a sufficient framework for assessing the commercial law and trade capacity building needs of Tajikistan for providing the necessary comfort to the mission in Almaty to program the next several years of technical assistance in these areas.

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### **1. 11/11/04: WTO Unit/Dushanbe**

The Memorandum of Foreign Trade Regime (MFTR) was submitted to the WTO in February 2003. The first working party meeting took place in February 2004. The Estonian ambassador in Geneva is chairman of the working party. The US, EU and Australia submitted questions. The Tajiks met the week before in Geneva with US's Mr. Casper of USTR. Key needs for the Tajiks include negotiations training, and some capacity building/knowledge transfer vis-à-vis the government standards bureau (GosStandart) particularly with respect to the Technical Barriers to Trade Agreement.

### **2. 11/8/04: Mr. Rahat Toktonaliev, Legal Advisor (Pragma)**

Mr. Toktonaliev had been working in Tajikistan for a number of years, but left Dushanbe in July 2004 after a two-year stint. He explained that the security situation in Dushanbe is very safe, as compared with other cities in Central Asia or with the situation that existed in the years of civil unrest.

There still remain significant gaps in legal system—a legal culture lacking. Nonetheless, entrepreneurs are emerging. People in villages are not consumers of commercial law.

The Tajik economy is rebounding, but not that significantly. (Nonetheless, EBRD points to roughly 8% growth, on average, over the last several years.) Many Tajik male workers go to Russia (about 500,000) and send remittances, using Western Union to send money. Most farmers grow cotton, whose world price is depressed.

There are some general commercial banks in Dushanbe. Uzbekistan remains a big problem for landlocked Tajikistan; authorities there are very suspicious that Tajikistan may be a source of terrorism and smuggling. Uzbekistan customs and police use traffic rules and tight policies to harass Tajik traders/truckers.

Tajiks want to join the World Trade Organization (WTO) urgently. The WTO's schedule is holding things up—there are just too many other important items on the agenda. Tajikistan may be able to join by end of 2005 or early 2006.

Political problems on accession:

- Alcohol and tobacco monopoly
- Transport services
- Agricultural subsidies (virtual problem, as no money to subsidy anyone)
- Tariff negotiations and CIS customs union are complicating calculations. If Russia joins WTO soon, then Tajikistan could likely join on similar conditions soon.
- Product standards reform is a main priority.
- Customs reform: new code is before parliament
- Intellectual Property Rights: some laws are being adopted

### **3. 11/9/04: Bill Kennedy (LIME Project)**

The LIME project is “remarkably successful” and well managed using regional approach. Kennedy believes that it has been well funded, and that the challenges that lay ahead are correlated with the level of expertise of government counterparts. One problem with Tajikistan is that expatriates are illness-prone—something the writer and the interviewee experienced while in Dushanbe.

- Pledge Law: Yair Baranes made a recent visit. The draft law has been finalized and will be put to Parliament.
- Customs Code: It's been held up; the imports situation is confused.
- Bankruptcy: Implementation is ongoing of a new law; contains important reorganization provisions. The project has published handbooks and guides, and has trained trustees. Six cases have been accomplished to date.
- Company Law: A law on joint stock companies is in the works that introduces corporate governance methods—esp. protections of minority shareholders.
- Real Property law;
- Tajik Civil Code Amendments needed
- Law on Energy Production and Distribution
- Health Care and Insurance
- Judicial Training: ongoing for six years; council of justice is very cautious and conservative.
- Business Environment: IFC just did a study on businesses.

### **4. 11/10/04: Rustam Mengliev (Dep. Minster of Justice)**

Mengliev said that ARD/Checchi has done a lot of good work, and the Ministry of Justice (MinJus) is very happy with it. The Adliya database doesn't cover as much as we'd like. In addition, the Ministry of Justice could use help in training staff, facilitating exchanges and training seminars abroad, and helping with implementation of laws. Needs concerning specific laws follow:

- Pledge law and mortgage law needs some more amendments and changes, including authority to auction seized collateral

- Real Property and mortgage: Next law to be implemented is the Registration of rights to immovable property. There is some discussion as to who should have responsibility: MBT, State land committee, or the GAU. All have some compelling reason why they should handle this system. One impediment also is related to the ownership of state property;
- Privatization is taking place, even though legal framework still considers/assumes that state owns all property. Immunity of state property as taking from collateral pledges
- Corporate governance/company law: Government is increasingly raising issues on this. MOJ is in charge of registering businesses, and is considering establishing a one-stop window format and simplifying procedures. Another potential agency that might do this is the tax authorities; the Russian tax department is taking a leading role in Russia and may serve as an example for Tajikistan
- Civil Code: Needs attention, including a prescription for handling conflicts in laws. We recently did a review and found that 15 laws need to be drafted: administrative procedures act.

## **5. 11/10/04: Madina Maksudovna Nurmatova (Antimonopoly Agency)**

[madina.aba@rambler.ru](mailto:madina.aba@rambler.ru) tel: 992-372-21-71-28

The antimonopoly agency implements the following laws: Competition, regulating monopolies, natural monopolies, state support for entrepreneurs, consumer rights, and advertising.

Laws were developed in 1997. Agency started in 2001. The law is modeled after Russia's, and was adopted through the CIS Inter-Parliamentary Committee process. The Agency has 77 staff, with offices in Dushanbe and several regions. 44 work in the Dushanbe office.

The Agency conducts hearing, not investigations. Most cases involve local government's intrusions in obstructing or over regulating the private sector. Antimonopoly can be used against government agencies, as the Russian law permits.

Some immediate difficulties include defining what an SME is, which is being debated among the staff. The definition would apparently have a major impact on the agency's operations. Secondly, inspections are a big burden on business—the IFC is working on a “law of inspections” that would regulate them.

## **6. 11/11/04: Mr. Ubaidullo Davlatov, Chairman (Higher Economic Court)**

The judge thanked USAID for all our help, particularly through the LIME project. There are lots of new laws on the books, including the private farms and bankruptcy laws. With respect to the public, Judge Davlatov noted that there is a vacuum among the people—they don't know their rights. Local government officials abuse the people's civil rights, and people don't know they have redress in courts. Public awareness seminars, funded by the Soros Foundation, have led to an increase in lawsuits.

Many new laws are being developed according to international standards. Judges lack knowledge and need training and more international exchanges (ha!). Economic procedural code: the working group slowed down progress so it needs some improvement.

#### **7. 11/11/04: Mr. Davlatov Jumahon, Chief (President's legal department)**

The president's department usually review laws that the executive branch drafts. Not enough has been done in the last four years—we need to create a good environment for investment.

We develop an annual legal action plan. This year it includes focusing on:

- Pledge law (Lime Project)
- Licensing (TFI project), which will whittle numbers of licenses from 900 to 113.
- Law on Financial Aspects of Terrorism & Corruption

TFI and LIME projects have been of enormous help to Tajikistan. Commercial law and judicial system needs more assistance. We have a lack of intellectual capacity for drafting laws. MinJus, the President's office, and Parliament have the strongest legal departments in the government. LIME provided three courses on the topic and developed a handbook on legal drafting. This handbook was very useful, and might be applicable in other countries.

Law graduates are not of high caliber anymore; pre-91 they were superb. However, Tajik State University is getting better, and its grads are pretty good. Their professors also participate in training classes.

#### **8. 11/11/04: Mr. Negmat Rahmatov, Deputy Chief (Dushanbe City Customs Office)**

Mr. Rahmatov described some of the challenges that face Tajik authorities with respect to the customs modernization. A major challenge is the work on a new Customs Code, which is truly needed for WTO accession purposes. (The customs union with the CIS is also a high priority.) The old code was full of directives; the new one is better containing specific provisions. According to the provisions of the new customs code, all documents are to be filed up to one month in advance, so that clearance can be done within 30 minutes at the border

The Asia Development Bank (ADB) is helping to finance the Customs agency's modernization; but the government thinks that the costs are very (too) high. In addition to modernization, the staff's skills and working procedures need some improvement. For example, we need to enhance risk management and also change the mentality of staff

With respect to WTO obligations, Tajikistan faces challenges in several sectors. For example, it needs to simplify the Sanitary-Phytosanitary (SPS), Veterinary Health, and Technical Barriers to Trade (TBT) regimes. Implementing border enforcement procedures for Intellectual Property Rights protection is also needed, in order to comply with the Trade Related Aspects of Intellectual Property Rights (TRIPs) Agreement.

With respect to creating a better business environment, the Customs agency is engaged on the consultative councils process. We will be embarking on a consultative council group sometime in November. More technological tools are needed to accomplish these tasks. November 17 will have a consultative council followed by a meeting with customs brokers. One thing that we would like to work on is the problem traders face once they cross the border. They face lots of difficulties in trading through Uzbekistan; 80 goods require licenses to be shipped through that country. Uzbeks don't allow transshipment of alcohol, but beer recently got through. The regime with Kyrgyzstan is easier.

**9. 11/11/04: Mr. Shavkat Mustafokulov, Chief of Department  
(Registration of Legal Entities, MinJus)**

We visited the registration areas for businesses, located at the Ministry of Justice in Dushanbe. The registrars occupied several rooms in the ministry building, and they appeared to be working in very organized and well-equipped offices. Registration is a two-stage process: stage one is a legal check, and stage two is the actual registration. There are eight staff in Dushanbe and four staff in each oblast.

Mr. Mustafokulov explained that Civil Code, last amended in 2000, provides that MinJus is to register businesses. The law was adopted in 2003 and contains progressive and simplified procedures. MinJus did this by eliminating other procedures. They are also going to license legal services providers. They are not sure whether there may be a human rights issue with licensing lawyers.

**10. 11/11/04: Mr. Jamshed Sharipov, Chief (Department of Foreign  
Relations of Ministry of Economy and Trade)**

Mr. Sharipov's office is located in perhaps the finest building we visited in Dushanbe (the building housing the Ministry of Economy and Trade). Mr. Sharipov recounted the history of the MFTR. He mentioned that the second working party meeting is scheduled in March 2005.

In terms of needs, training is a priority for enhancing the skills of staff and other members of society. Not enough people understand the WTO. We also need training for negotiations.

**11. 11/11/04: Mr. Sergey Pavlenko, Member of Parliament**

Mr. Pavlenko is an MP and serves as the deputy chair of the committee on Energy. He is much involved in the work of the LIME project, and discussed several commercial law priorities. The key point raised by Mr. Pavlenko is that the **legislative branch feels neglected and wants to play larger role in lawmaking**. Pavlenko suggested that the LIME and TFI projects should incorporate the Parliamentary committees' agendas into the project workplans. The Committees' agendas are to be established by October 31, 2004.

Elaborating on the work of Parliament, Pavlenko mentioned that it has, of course, the power of legislative initiative. Some 55% of all laws passed are drafted by MPs. His committee has drafted 18 laws, only some of which were not signed by the President.

(72 of 86 laws have been signed.) Mr. Pavlenko cataloged some of the myriad measures that Parliament and the government are working: tax code, customs code, joint stock company law, laws on licensing; procurement, franchising, investments, and mortgage.

The economy is improving all the time, but Tajikistan needs to keep the momentum going through encouragement of more private investment (either from domestic or foreign sources). Privatization and the restructuring of state monopolies are important issues, particularly phone and electricity. Use of natural resources is problematic—production-sharing agreements may be a good start.

Pavlenko proposes developing an experts' council that has the ability to analyze legislation because Parliament and the executive branch simply do not have enough time or expertise to handle everything. Government is already reaching out to the private sector by establishing a working group to address trade regulation. .

## **12. 11/12/04: Ms Kanoat Khamidova, Director (Judicial Training Center)**

This was perhaps the brightest spot on the commercial law reform horizon in all of Dushanbe. Ms Khamidova appears to be an energetic and ambitious that heads the judicial training center (JTC). The JTC is an institution that has received funding and support from several sources, including USAID, the Soros Fund (which provided funding for building restoration), the Swiss Government (providing furniture and renovations), and perhaps others. The LIME project is developing a bench book and providing some other support too.

The JTC has ambitious plans to ensure that all Tajik judges receive sufficient continuing judicial education. Next year, the initial five-year terms for existing judges expires; more training will be necessary. The JTC conducts a judicial survey to ascertain needs and challenge areas. On a different note, the JTC will also be used for human rights training. The LIME project also facilitates training for Tajik judges (and judicial trainers) through the National Judicial College in Reno, Nevada. The next training session will take place in the March-April, 2005, time period.

One of the themes of the assessment was regional cooperation, and Ms Khamidova mentioned that some regional cooperation exists with Kyrgyzstan and Kazakhstan. Khamidova was intrigued with advancing some joint cooperation with Tajikistan's neighbors to the south, i.e., Afghan judges. She suggested that there might be an opportunity to conduct joint training of judges from Afghanistan at the JTC. There are some compelling reasons why: Tajiks and Afghan (Kabul) share the same language and common historical roots, the Tajiks are at a relatively higher stage of development, and donors may have made funds available for Afghans to receive such training. Afghan conference idea came up in Canada. Khamidova will see if government will support such an endeavor.

Needs:

- Training needs for court secretaries, clerks, and bailiffs.

- Judges want handbooks.

### **13. 11/12/04: Mr. Naim Mansurov, Chairman, Dushanbe District Court**

Mansurov used to be the first deputy chairman of the Council of Justice, so he's been involved in judicial reform for many years. The Judicial examination requirement was the most important part of the reform process.

Judiciary is an independent branch of government according to the Tajik constitution. The Council of Justice (COJ) is the mechanism through which the courts are administered, with budgeting also going through it. The COJ also has the role of nominating judges for Presidential vetting.

Not every judge yet has a computer, so most work is done manually. There are 300,000 people in our judicial district, and we have the highest caseload in all the country. We have 14 judges, 14 bailiffs, and 14 secretaries. The court is organized into a civil and a criminal branch, each with a judicial clerk.

Problems:

- Many disputes about housing—too many claims arising due to fraudulent sales as the aftermath of the civil war (80% of Russian left Dushanbe). Refugees are now coming back and trying to reclaim their (former) property. Many administrative problems stymie their resolution:
  - Caseload is rising; typical caseload is now at 200 per year.
  - Judges are too busy to actually plan and manage.
  - Not enough time to write decisions
  - As a practical matter, there's no way to coerce people to appear in court in civil proceedings, leading to many delays.

### **14. 11/12/04: Ms Fatma Sharapova, Director (“Education” Legal Clinic)**

This was another bright spot in Dushanbe concerning legal reform. We visited a legal clinic located at the Russian/Slavonic University Law School. It is an NGO and receives funding from ODIHR of the OSCE. The charismatic yet practical Ms Sharapova has run for a number of years. In Sharapova's words, this is the first clinic in Tajikistan and “one of the best in Central Asia”. The clinic explores a number issues, including gender issues. Many posters promoting AIDS avoidance were hung in the office.

Under the clinic's program, third year students can participate in the clinic. There were approximately 15-20 law students that sat down with us for the meeting. The students are interested in working with the clinic for the following benefits:

- Improve legal skills through practice
- Consult with vulnerable people
- Attend a special course on “street law”. Under this project, two students go once a week to schools to teach “street law”. There are 37 teaching sessions conducted at schools during the September through May period.



## **15. 11/12/04: Tajik State University Law Professor and MP**

This was perhaps the most interesting of all interlocutors I met in Dushanbe. This individual (name not written down) is probably the most respected jurist in Tajikistan, being head of the law faculty at Tajik State University. Generally, he said that Tajik laws that are adopted are not up to international standards and that they don't meet the needs of the business community.

The professor said that parliament and the government came up with a legal reform plan in 2003, but that plan was not completely implemented, e.g., Customs and Tax Code, due to political issues. Perhaps by way of explanation, he went on to say from among all donors the World Bank has had the lead on tax and customs code reform. Moreover, he mentioned that the business community was not consulted.

With respect to the supporting institutions of a legal civil society, the professor had very good things to say about the LIME project. The LIME project developed a working group for Part I of the Civil Code; it includes people who are working on the commentary. The composition of the working group is 50% government and 50% NGOs, business, and professors. (This is in sharp contrast to the organization of the bodies working on the tax and customs codes.) The TFI project's (by Pragma) working group usually comprises just government people. But he mentioned that they should include the private sector. Professor was the only one from the private sector.

Lastly, the professor warned that the national program of education is in crisis. He wrote an article about it in January 2004, much to the consternation of the Education Ministry about it. Currently there are at least 12 schools in Tajikistan that are producing about 300-400 graduates per year, but the standards for graduation are not rigorous.

## **16. 11/12/04: Meeting with LIME Project (ARD/Checchi) Staff**

Echoing matters discussed in other meetings during my three days in Dushanbe, the staff of the LIME project repeated that Tajik laws are not up to par with those of the CIS countries. The staff feels that they are missing out on a lot, but that they can also learn from others. We need the involvement of international experts; laws don't meet our requirements. E.g., the pledge law is not good enough, but a replacement law is still just being drafted and debated.

The most apparent challenges for Tajikistan in the legal reform arena were the following, the staff's eyes:

- Enhance legislative drafting skills;
- Fix Part III of the Civil Code, particularly provisions on intellectual property;
- Enhance the Russian language translation and interpretation skills on the staff of the project;
- Need to improve transparency overall in society. There is no access to draft laws; the government fails to publish laws, regulations, and edicts.

## **17. 11/12/04: Meeting with TFI Project (Pragma) Staff**

Perhaps reflecting the writer's exhaustion level, few notes were available from the meetings with the TFI project staff. Nonetheless, discussion focused on the ensuing preparations for future meetings of the consultative councils established in several oblasts (Xojan and Dushanbe).

## **Appendix 2**

### ***Contractors in Tajikistan***

USAID has been providing assistance on commercial law matters under the LIME (Legal Infrastructure for a Market Economy) Program under task order OUT PCE-1-814-97 in Tajikistan. The current task order became effective on September 30, 1999, and its completion date is August 4, 2005. The total ceiling price is \$13,115,179.00 for this task order, whose budget is also dedicated to activities in Kyrgyzstan.

#### ***LIME***

Implementer:	(ARD-Checchi)
Expiration Date:	5 August 2005:
Budget:	Will drop by 50%.
Burn rate:	Tajikistan: \$55,000/month

#### ***TFI Program***

Implementer:	Pragma
Expiration Date:	31 May 2006
Budget:	\$600,000 year

TFI is a four country, regional project. One issue is that there is not much cooperation across borders.

## **Appendix 3**

### **18. Reporting Requirements and Judicial Assessment Questions**

#### **1. The Team's report should include the following:**

- Executive summary of principal conclusions and findings responsive to the "Evaluation Purpose" as stated in the statement of work;
- A brief discussion of data collection methodology (a more detailed presentation of methodological issues should be included as an appendix);
- A thorough discussion of study findings and conclusions, including supporting evidence such as tables or graphics;
- Sufficiently detailed answers to the questions set forth in the statement of work; and
- Any other recommendations that the contractor can provide for improving the program.

The report should be no more than 25 pages long, double-spaced, 12-point type. Additional materials, which will include copies of field notes, interview protocols and questionnaires, should be attached as annexes.

#### **2. ROL questions for Judicial Assessment:**

- Has USAID-funded judicial training had an impact of the daily lives of citizens? If so, how? If not, why not?
- Has the perception of the judicial system by citizens, the business community, members of the legal profession and governmental entities improved as a result of USAID-funded assistance? If so, how? If not, why not?
- Has USAID assistance changed the way the judiciary functions? If so, how? If not, why not?
- What is the greatest need of the judiciary in your country and what assistance can USAID give to meet this need?
- Who is in control of the judiciary and what entities/officials does USAID need to cooperate with to affect change in the judicial system?